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SUBJECT: NIGERIA - 2010 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS AND REPORT ON SANITARY AND PHYTOSANITARY AND STANDARDS-RELATED FOREIGN TRADE BARRIERS

REF: STATE 106353

¶1. (U) Trade Summary: The U.S. goods trade deficit with Nigeria was $34 billion in 2008, an increase of $4 billion from $30 billion in ¶2007. U.S. goods exports in 2008 were $4.1 billion, up 47.7 percent from the previous year. Corresponding U.S. imports from Nigeria were $38.1 billion, up 16.2 percent. Nigeria is currently the 44th largest export market for U.S. goods. The stock of U.S. foreign direct investment (FDI) in Nigeria was $190 million in 2006 (latest data available).

Import Policies - Tariffs

¶2. (U) The Government of Nigerian (GON) issued the 2008-2012 Common External Tariff (CET) Book that harmonizes its tariffs with its West African neighbors' under the Economic Community of West African States (ECOWAS) Common External Tariff (CET), in September 2008. Nigeria has been partially implementing the CET since 2005. The tariff regime has five tariff bands and import duties were reduced on a number of items, such as rice, cigars, and manufactured tobacco. The five CET tariff bands are: zero duty on capital goods, machinery, and essential drugs not produced locally; 5 percent on imported raw materials; 10 percent on intermediate goods; 20 percent on finished goods; and 35 percent on goods in certain sectors. The fifth band proposed by the GON has been accepted by ECOWAS member countries as part of the CET, but each member country can include products it deems appropriate. Adoption of the CET is part of ongoing economic reforms aimed at improving Nigeria's trade and investment environment and harmonization of economic policies in the sub-region. There is some resistance within the GON and the private sector against deepening trade reforms.

¶3. (U) Companies state that high tariffs, non-transparent valuation procedures, frequent policy changes and unclear interpretations by the Nigerian Customs Service (NCS) continue to make importing difficult and expensive, and often create bottlenecks for commercial activities. Some importers complain that tariffs are excessively high and that the GON sometimes uses arbitrary reference prices for valuation purposes. This problem is aggravated by Nigeria's dependence on imported raw materials and finished goods and affects most manufacturers. Many importers reportedly resort to undervaluing and smuggling to avoid paying full tariffs. Transparent and proper implementation of the CET would be an important step toward resolving most of these problems.

Non-Tariff Measures

¶4. (U) The GON continues to ban certain imports, citing the need to protect local industries. The new CET book reduces the number of

items on the import prohibition list from 44 to 26. Items removed from the list include corn, sorghum, millet, wheat flour, crude vegetable oil, biscuits, sugar confectioneries (including white chocolate), fresh and dried fruit, flowers (both fresh and plastic), toothpaste, envelopes, diaries, greeting cards, exercise books, bentonites, barites, calendars, cutlasses, axes, pick axes, spades, shovels, fully built mudguards, wheel barrows, and electric generating sound proof casings.

¶5. (U) Items remaining on the import prohibition list include:
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bird's eggs, cocoa butter, powder and cakes, pork, beef, live birds, frozen poultry, refined vegetable oil and fats, cassava, bottled water, spaghetti, noodles, fruit juice in retail packs, non-alcoholic beverages (excluding energy drinks), certain textile products, and bagged cement. Companies were awarded concessions to import bagged cement until December 2008 to bridge supply gaps. A new cement policy was announced in October 2009. The policy bans the importation of bagged cement, but provides some concessions to cement producers. Such concessions include duty exemption on imported machinery and raw materials such as gypsum.

Customs Administration

¶6. (U) Nigeria practices a destination inspection policy for imports. Under this policy, all imports are inspected upon arrival into Nigeria, rather than at the ports of origin. Nigeria's port practices continue to present major obstacles to trade. The country's list of items prohibited for import, coupled with incorrect declaration of goods by importers, result in 95 percent of containers being physically examined. This delays the clearing process and increases costs. Nigeria's uneven application of import

and labeling regulations make importing high-value perishable products difficult. Disputes between Nigerian agencies over the interpretation of regulations often cause delays, and frequent changes in customs guidelines slow the movement of goods through Nigerian ports. Importers report erratic application of customs regulations, lengthy clearance procedures, high berthing and unloading costs, and corruption. These factors can contribute to product deterioration and may result in significant losses for importers of perishable goods.

¶7. (U) Realizing that delays at the ports significantly increase the cost of doing business in Nigeria, the GON plans to implement a 48-hour cargo clearance policy at the ports. Roads coming in and out of the ports are decaying, and overuse results in around-the-clock traffic congestion. There is no rail system transporting freight in and out of ports. This congestion leads to ships queuing up to berth at cargo terminals and containers waiting to be transported out of the ports. The port operator for Lagos ports, APM Terminals, made significant improvements in regards to off-loading ships in 2009. Containers now come off of ships at a much faster rate but then have to wait for up to 45 days to be processed through customs. This is true for all privately run ports. The bottlenecks resulting from the lack of infrastructure in and around the ports affect the efficiency at which goods can be processed for import. Over 15 agencies are represented at the ports.

¶8. (U) In a bid to achieve the 48-hour cargo clearance target at the ports, the GON plans to withdraw all agencies, except the NCS, from the ports and improve the technical capacity of NCS to handle special cargos through continuous training of personnel. There are also plans to automate all customs payments. Private sector sources complain that corruption in the ports contributes to delays in clearing containers and that payment of illegitimate fees can speed up the process.

Export Subsidies and Other Export Promotion Programs

¶9. (U) The GON administers various export incentive programs such as tax concessions, export development funds, capital asset

depreciation allowances, and foreign currency retention programs in addition to operating Free Trade Zones and Export Processing Zones. According to the 2008-2012 CET Book, most concessions, waivers or exemptions on imports have been stopped. However, the Nigerian Export Promotion Council will continue to implement the Export Expansion Grant scheme to improve non-oil export performance.

Standards, Testing, Labeling, and Certification
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¶10. (U) Regulations for sanitary and phytosanitary standards, testing, and labeling are well defined in Nigeria. The National Agency for Food and Drug Administration and Control (NAFDAC) is responsible for administering sanitary and phytosanitary (SPS) standards which are mostly the application of the Codex Alimentarius Commission, European Union, and U.S. Food and Drug Administration standards.

¶11. (U) Nigeria requires that all food, drug, cosmetic, and pesticide imports be accompanied by certificates of analysis from Qpesticide imports be accompanied by certificates of analysis from manufacturers and appropriate national authorities, regardless of origin. Specified animal products, plants, seeds, and soils also must be accompanied by proper inspection certificates. Items entering Nigeria must be labeled exclusively in the metric system, as specified by law. U.S. producers and exporters note that relabeling goods to meet this requirement is expensive and could limit U.S. exports to Nigeria. NCS is charged with preventing the entry of products with dual or multiple markings, but such items are often found in Nigerian markets.

¶12. (U) NAFDAC's responsibilities include protecting Nigerian consumers from fraudulent or unhealthy products. The agency continues to pay special attention to eliminating the illicit importation of counterfeit and expired pharmaceuticals, particularly from East and South Asia. NAFDAC's limited capacity for carrying out inspections and testing contributes to what critics have characterized as an occasionally heavy-handed or arbitrary approach to regulatory enforcement which sometimes leads to delays in clearance of legitimate food imports. NAFDAC does not have a specific regulation on packaging but is in the process of developing one.

¶13. (U) The Standards Organization of Nigeria (SON) administers product standards through the Standards Organization of Nigeria Conformity Assessment Program (SONCAP). SONCAP requires exporters to Nigeria to obtain both a product certificate, which is issued after the submission of an acceptable test report to the local SON office in the exporter's country, and a shipment certificate on a shipment-by-shipment basis. Products covered by SONCAP include toys; electrical and electronic products such as household appliances, communication products, and lighting products; used motor vehicles; vehicle spare parts; tires; automotive glass; chemical products such as motor oils, paints, and bitumen; tobacco; construction materials, mechanical devices and gas appliances such as taps and valves, ceramic and sanitary ware, pressure cookers, aluminum products, and cement; paper and stationery items; protective safety equipment such as firefighting equipment; and mosquito nets.

¶14. (U) The government is generally supportive of biotechnology. Nigeria has no laws governing the application of biotechnology. A draft biosafety legislation is being considered by the National Assembly. The draft legislation portrays biotechnology products as safe for human and animal consumption but includes a mandatory labeling requirement.

¶15. (U) U.S exporters do not complain that Nigeria's SPS regulations and standards are barriers to exporting U.S. goods to Nigeria. However, they complain about bureaucratic delays in product registration, as well as bottlenecks and inefficiencies at the ports and cite them as disincentives to exporting to Nigeria.

Government Procurement

¶16. (U) The GON continues to take steps towards improving public procurement. An amendment to the Public Procurement Act is being considered by the National Assembly. The proposed amendment contains provisions for decentralizing government procurement and increasing the procurement authorization limits for ministries, department, and agencies, unlike the earlier legislation which created a central clearinghouse for issuing and monitoring all government procurement above 50 million naira ($333,333). The 36 state governments have also agreed to enact the Public Procurement Act in their respective states.

¶17. (U) Foreign companies incorporated in Nigeria receive national treatment in government procurement, government tenders are published in local newspapers, and a "tenders" journal is sold at local newspaper outlets. U.S. companies have won government contracts in several sectors. Budget delays often result in both local and foreign companies experiencing delays in getting paid for contracts done for the GON. This has contributed to financial difficulties for the suppliers of some goods and services.

¶18. (U) The National Petroleum Investment and Management Services (NAPIMS) agency's approval is required for all procurement in the energy sector with a value above $500,000. Approval processes are slow and can significantly increase the time and resources required for a given project. Nigeria is not a signatory to the WTO Agreement on Government Procurement.

Intellectual Property Rights (IPR) Protection
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¶19. (U) Nigeria is a party to the World Intellectual Property Organization (WIPO) Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, and the Patent Law Treaty. Nigeria has also signed the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Legislation intended to establish a legal framework for an IPR system consistent with WTO obligations has been pending in the National Assembly for several years.

¶20. (U) GON's lack of institutional capacity to address IPR issues is a major constraint to police enforcement. GON IP agencies suffer from low morale, inadequate training, and limited resources. Piracy remains a problem despite Nigeria's active participation in the conventions cited above and growing interest among Nigerians in seeing their intellectual property protected. Counterfeit

automotive parts, pharmaceuticals, business and entertainment software, music and video recordings, and other consumer goods are sold openly, and piracy of books and optical disc products is a problem. Industry reports contend that intellectual property infringers from other countries appear active in using Nigeria as a base for producing pirated goods. Industry sources claim that Nigeria has the capacity to make an estimated 800 million CDs/DVDs a year.

¶21. (U) Patent and trademark enforcement remains weak, and judicial procedures are slow and reportedly subject to corruption. However, the GON is taking steps to improve enforcement. Efforts to combat the sale of counterfeit pharmaceuticals, for example, have yielded some results. The GON also included pirated materials in the list of prohibited imports in the 2008-2012 CET Book, which provides NCS the authority to seize pirated works if imported into the country. In addition, the GON has requested training to improve its enforcement efforts. In 2008 and 2009, the United States responded by providing training assistance on IPR enforcement to GON officials in several sectors, with a focus on copyright piracy, border enforcement, counterfeiting, patents, and trademarks. The United

States intends to continue IPR training assistance to Nigeria in
¶2010.

¶22. (U) Nigeria's broadcast regulations do not permit rebroadcast or excerpting of foreign programs unless the station has an affiliate relationship with a foreign broadcaster. This regulation is generally complied with, but some cable providers illegally transmit foreign programs. The National Broadcasting Commission monitors the industry and is responsible for punishing infractions.

¶23. (U) Widespread pirating of foreign and domestic videotapes discourages the entry of licensed distributors. In 2004, the Nigerian Copyright Commission (NCC) launched an anti-piracy initiative named "Strategic Action against Piracy." The Nigerian police force, working closely with the NCC, has raided enterprises producing and selling various pirated works such as software, books, and videos. The NCC obtained two convictions on broadcast piracy and software piracy in 2009. About 60 cases are currently being prosecuted against IPR violators in various courts in the country. However, inconsistent application of legal and law enforcement measures remain deterrents to IPR enforcement.

Services Barriers

¶24. (U) Foreign energy services suppliers are confronted with a number of barriers in Nigeria, particularly with respect to movement of personnel. Nigeria imposes quotas on foreign personnel based on the issued capital of firms. Such quotas are especially strict in the oil and gas sector and may apply to both production and services companies. Oil and gas companies must hire Nigerian workers unless they can demonstrate that particular positions require expertise not found in the local workforce. Positions in finance and human resources are almost exclusively reserved for Nigerians. Certain geosciences and management positions may be filled by foreign workers with the approval of NAPIMS. Each oil company must negotiate its foreign worker allotment with NAPIMS. Delays in this
Qnegotiate its foreign worker allotment with NAPIMS. Delays in this process and in the approval of visas for foreign personnel present serious challenges to the energy industry in acquiring the necessary personnel for their operations.

Investment Barriers

¶25. (U) Investment in the petroleum sector is limited to existing joint- ventures or production-sharing agreements. Foreign investors may invest in any Nigerian firm except those firms on an exemption list, which includes companies that manufacture firearms, ammunition, and military and paramilitary apparel. Foreign investors must register with the Nigerian Investment Promotion Commission after incorporation.

¶26. (U) Potential investors must contend with complex tax administration procedures, confusing land ownership laws, overlapping land ownership claims, arbitrary application of regulations, power shortages, poor roads, corruption, and crime. The sanctity of contracts is often violated and Nigeria's court system for settling commercial disputes is weak and can be biased. There were at least three prominent cases in 2009 where the judicial system or law enforcement agencies where manipulated by local companies in order to exert undue pressure on U.S. companies and individuals for commercial advantage.

¶27. (U) International oil companies are under significant pressure to increase procurement from domestic firms. The GON, through the Nigerian Content Division (NCD) of the Nigerian National Petroleum Corporation (NNPC), has set a target of 70 percent local content for oil-related projects by 2010. The GON did not meet its 2008 target, and will likely not meet its 2009 target due to infrastructure challenges such as power shortages, and insecurity in the oil-producing Niger Delta. Sufficiently trained personnel and physical infrastructure do not exist in many cases to meet the GON's local content targets. Some domestic firms possess adequate

technical expertise, but managerial and financial capabilities are often lacking. New legislation to codify mandatory levels of Nigerian content in specific petroleum activities is pending in the National Assembly. The proposed legislation would have a strong negative impact on the operations of international energy services companies already operating in Nigeria and could lead to higher costs for international oil companies.

¶28. (U) The vast majority of natural gas flaring in Nigeria is done in older, on-shore, and near-off-shore oilfields. International oil companies typically operate those fields in a joint-venture arrangement with the NNPC as the majority partner. Funding for joint-venture operations, maintenance, and equipment upgrades comes from joint-venture partners in proportion to their equity ownership. The GON has failed to fully fund its share of the joint-venture costs during the past several years, reducing the ability of the operating partners to install new anti-flare technology in these older oilfields.

¶29. (U) The proposed Petroleum Industry Bill (PIB) would increase the government share of oil and gas revenues from mandated joint ventures and thereby affect the investment climate for the oil and gas sector. Stakeholders in the sector, including international oil companies (IOCs) and oil and gas service providers, as well as Nigerian firms, have been advocating change in the fiscal and non-fiscal terms of the proposed bill to make it more attractive to private sector investment. Other issues of concern include sanctity of contract, mediation, and dispute settlement. Investment in the oil and gas sector, especially IOC investment, has slowed pending the passage of the final bill.

Other Barriers

¶30. (U) The GON has made efforts to eliminate financial crimes such as money laundering and advance fee fraud (also known as "419 fraud," after the relevant section of the Nigerian Criminal Code). In June 2006, the Financial Action Task Force removed Nigeria's name from the list of non-cooperating countries and territories in the fight against money laundering and other financial crimes. In May 2007, Nigeria was admitted into the Egmont Group of Financial Intelligence Units.

¶31. (U) Nigeria was ranked 130 out of 180 countries in Transparency International's 2009 Corruption Perception Index (CPI) dropping nine places from its 121 ranking in the 2008 CPI. Nigeria's corruption levels remain high and its main anti-corruption institution, the Economic and Financial Crimes Commission has faltered recently in QEconomic and Financial Crimes Commission has faltered recently in its commitment on the issue. The World Bank's Doing Business 2010 report also ranked Nigeria 125 out of 183 countries surveyed for ease of doing business, a decline from its 120 position out of 183 countries surveyed in Doing Business 2009. Some U.S. suppliers believe they lose sales when they refuse to engage in illicit or corrupt behavior. Other U.S. exporters say Nigerian businessmen and officials understand that U.S. firms must adhere to the U.S. Foreign Corrupt Practices Act, and they believe that the law's restrictions help minimize their own exposure to corruption.

SANDERS